

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARNESS BIRDETTE

Plaintiff,

v.

DISH NETWORK, et al.,

Defendants.

CIVIL ACTION NO.

1:12-cv-285-JEC

ORDER

The above entitled action is presently before the Court on plaintiff's Motion to Appeal In Forma Pauperis [11]. This Court entered an Order on February 27, 2012, adopting the magistrate judge's Final Report and Recommendation dismissing the complaint for failure state a claim upon which relief may be granted [7]. Judgment [8] was entered on February 27, 2012. On March 12, 2012, plaintiff filed a Notice of Appeal [10].

In conducting a frivolity review of the complaint, pursuant to 28 U.S.C. § 1915(e)(2)(b), the magistrate judge determined that plaintiff's claims were frivolous and recommended that the case be dismissed on that ground. Accordingly, although the magistrate judge granted plaintiff's request to proceed in forma pauperis (IFP) for purposes of dismissal, only, the magistrate judge did not permit

the plaintiff to proceed with the litigation as an IFP litigant. (Order dated February 15, 2102 [4].

FED. R. APP. P. 24(a)(3)(A) provides that "a party who was permitted to proceed in forma pauperis in the district-court action ... may proceed on appeal in forma pauperis without further authorization unless: (A) the district court...certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis, and states in writing its reasons for the certification or finding" The plaintiff was not permitted to proceed in forma pauperis in her district court action.

Moreover, even if a plaintiff meets the financial requirements, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "An appeal is taken in good faith if, viewed objectively, the party 'seeks appellate review of any issue not frivolous.'" *Hurt-Whitmire v. Georgia*, 2010 WL 1664951 at *1 (N.D.Ga. 2010) (quoting *Coppedge v. U.S.*, 369 U.S. 438, 445, 82 S. Ct. 917 (1962)).

As the Court has already concluded that plaintiff's case was frivolous, it likewise concludes that her appeal is not taken in good faith. Therefore, the Court **DENIES** plaintiff's Motion to proceed In Forma Pauperis on Appeal [11].

SO ORDERED, this 30th day of MARCH, 2012.

/s/ Julie E. Carnes
JULIE E. CARNES
CHIEF UNITED STATES DISTRICT JUDGE